

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 10, 2007 Session

**STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES v.
D.D.W.**

**Appeal from the Juvenile Court for Montgomery County
No. 123-10/123-11 Wayne Shelton, Judge**

No. M2006-02639-COA-R3-PT - Filed on May 23, 2007

The mother of two children appeals the termination of her parental rights. The trial court terminated her parental rights on the grounds of substantial noncompliance with the permanency plans. The trial court also found the termination of Mother's rights to be in the best interest of the children. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, J., and DONALD P. HARRIS, SR. J., joined.

Kimberly Falls Lentz, Clarksville, Tennessee, for the appellant, D.D.W.

Robert E. Cooper, Jr., Attorney General and Reporter, and Lauren S. Lamberth, Assistant Attorney General, for the State of Tennessee, Department of Children's Services.

MEMORANDUM OPINION¹

The Department of Children's Services became involved in this matter in September of 2004 when it learned of allegations that Mother was abusing drugs while she was seven months pregnant with C.O.W. On November 1, 2004, one month prior to the child's birth, Mother tested positive for cocaine. On November 30, 2004, the child was born testing positive for cocaine. On December 3, 2004, the Department petitioned the Juvenile Court to find the newborn C.O.W. and his older sibling

¹Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

S.A.D.S. dependent and neglected and to award temporary custody of the children to the Department. The petition was granted; the Department was awarded custody of both children and placed them in foster care where they have remained ever since.

Permanency plans were implemented on December 21, 2004, the essential goal of which pertained to Mother's drug and alcohol abuse. Specifically, the plans required Mother to: (1) complete an alcohol and drug assessment; (2) cooperate with the recommendations of the assessment; (3) continue treatment until the treatment goals were met; (4) attend, and participate in, support groups and other services to aid in addressing issues contributing to her drug problems; and (5) refrain from drug/alcohol abuse.

A year after the permanency plans were implemented, the Department filed a petition to terminate Mother's parental rights. In the petition, the Department contended that Mother failed to substantially comply with the goals listed in the permanency plans. The matter went to trial on October 30, 2006. Following a full evidentiary hearing, the trial court terminated Mother's parental rights for substantial non-compliance with the permanency plans and upon a finding that termination was in the children's best interests.

Mother appeals contending there is insufficient evidence of substantial non-compliance and insufficient evidence that the termination is in the best interest of the children.² We find no merit to her appeal.

The record tells us that the Department exerted reasonable efforts and provided Mother with the type of assistance she needed to address her drug dependency; yet, Mother failed to curb her drug abuse. The permanency plans went into effect in December 2004. Mother completed a drug counseling program at the Samaritan House on June 27, 2005, following which the Samaritan House recommended that Mother attend three to five "12-step" meetings on a weekly basis. She, however, never attended more than twice a week. We also learn from the record that Mother pled guilty to public intoxication on July 20, 2005. Three weeks later, the Department again enrolled Mother in an outpatient drug treatment program. Approximately one week after she resumed treatment, Mother was dis-enrolled for lack of attendance. Moreover, on September 7, 2005, Mother tested positive for cocaine. She completed the drug treatment program on December 7, 2005; however, five days later, she again tested positive for cocaine.

Based upon the foregoing facts, we have concluded that there is clear and convincing evidence in the record to support the trial court's findings that Mother failed to comply with the

² Mother raised a total of six issues; however, the issue of substantial non-compliance is dispositive of this appeal. She contends the Department failed to make reasonable efforts to assist her in complying with the permanency plans. We find this argument without merit. The record indicates that the Department, among other things, set up an alcohol and drug assessment, enrolled and re-enrolled her in drug treatment, and provided her with transportation to visitation and treatment, albeit not always reliable, but Mother's failures were due to her drug abuse not the reliability of transportation.

permanency plans by testing positive for cocaine on at least two occasions, and pleading guilty to public intoxication.

The trial court also found that termination of Mother's parental rights was in the children's best interest pursuant to Tenn. Code Ann. § 36-1-113(i). The trial court found that Mother could not provide the care and stability the children need due in large part to her continuing drug and alcohol abuse. The children have been living in the same foster home the entire time they have been in state custody, they had been thriving in this environment, and the foster parents desire to adopt the children. Based on these and other facts in the record, we have determined the evidence clearly and convincingly supports the trial court's determination that termination of Mother's parental rights is in the best interest of the children.

The judgment of the trial court is affirmed as to termination on the basis of substantial noncompliance with the permanency plans, and this matter is remanded with costs of appeal assessed against the Department of Children's Services, due to Mother's indigency.

FRANK G. CLEMENT, JR., JUDGE